

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN KEN TOOLE**, on February 17, 2005 at  
3:00 P.M., in Room 317-C Capitol.

**ROLL CALL**

**Members Present:**

Sen. Ken Toole, Chairman (D)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jeff Essmann (R)  
Sen. Dan Harrington (D)  
Sen. Dave Lewis (R)  
Sen. Greg Lind (D)  
Sen. Dan McGee (R)  
Sen. Gary L. Perry (R)  
Sen. Glenn Roush (D)  
Sen. Carol Williams (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Casey Barrs, Legislative Branch  
Claudia Johnson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 372, 2/10/2005  
Executive Action: SB 428; SB 364; SB 415, SB 371, SB  
307, SB 372

**HEARING ON SB 372****Opening Statement by Sponsor:**

**SEN. KEN TOOLE (D), SD 41**, opened the hearing on **SB 372**, Prohibit public subsidy of certain private coal or natural gas facilities.

He stated that the concept of SB 372 is straight forward. It restricts the use of public funds, tax credits, tax deductions for coal and natural gas facilities, unless the net generating load at the facility is dedicated to in-state use only for the customers if they require less than 1000 kWh. The small customer has the same restrictions as the transmission facilities. Before de-regulation, there have been numerous proposed large energy projects by developers who had a lot of ideas to make energy. These projects consistently had problems with capital in the financial market. He said there were contentious discussions about involving the Public Service Commission (PSC) to pre-approve projects so the developers could be guaranteed a market. He said because these projects are high-risk, they have had a hard time going forward. In high financial markets, the projects are very capital intensive, and have a high level of risk in private financial markets. He discussed projects that have been presented in this legislation and the last legislation on various programs that have been put forward that would require public investment. The private financial markets are willing to take on these projects, but then shift that burden onto the taxpayer. He said this bill is an effort in recognizing the problem by focusing on these private coal, natural gas, and transmission facilities; they were generally quite large. He gave an example of some of the facilities that had problems: the fights over Colstrip III and IV. Colstrip III ended up in a rate base, and their application was denied. Treatment in the rate base by the PSC is still in district court because of the argument that it wasn't needed at that time and the reason that Colstrip IV was sold off of the system. When these plants were built, it was the understanding they were for Montana use, which didn't turn out to be true. He said if a developer wants to take the risk, they can find the banker for whom bond markets can accept those risks, and that is okay if they want to do business. He stated, it is different when they ask the public to take that risk in tax credits or direct subsidies for these projects; it is asking a lot. The bill does use a public subsidy if the power is used by the people in Montana, and if the power is dedicated to small users.

**Proponents' Testimony:**

**Patrick Judge, Montana Environmental Information Center (MEIC)**, stated that they support SB 372. He talked about an article that was in the Montana Standard newspaper, on the concerns about global hydro change, and Montana's involvement in that problem. He said the heart of the bill is whether Montana wants to provide private subsidies to power generator facilities that will add to the carbon burning in the atmosphere.

**Opponents' Testimony:**

**Jim Mockler, representing the Montana Coal Council**, discussed energy developed in Montana from public subsidy, and he said that it is unconstitutional. He talked about the concerns every one had when Colstrip III & IV was built with public subsidies. He said if this bill is passed, it will mean that all of the subsidies will be jeopardized in the development of energy. He said in fairness, and the spirit of non-discrimination, he asked that the Committee not support this bill.

**Ron Devlin, representing NorthWestern Energy (NW)**, informed the Committee that he has concerns with the tax credits and tax deductions. He referred to the new Section 2 of the bill. He questioned the language whether new facilities will be able to use the standard business deduction. He discussed the part of the bill where these facilities will be able to sell bonds to finance transmission facilities. He said there was a bill in the House Energy Committee they supported that would finance bonding and fall back on the tax payers. This is a standard business practice in order to finance facilities that will be built for energy in Montana, and the reason that NW is in opposition to SB 372.

**Matt Cole, representing himself**, stated this bill is discriminatory. He said if energy is to be developed in Montana, they need to look at the best way possible to install transmission lines so Montana can use its resources in the best way possible. He said it is illegal in most states to require in-state only. He urged the Committee to not support this bill.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

The Committee and **CHAIRMAN TOOLE** discussed the initial reason for this bill, was the bill that was heard in the House. That bill didn't include the use of transmission lines, or the use of public subsidy. The bonding proposed in that bill was

\$750,000,000, and the interest on the subsidy would have been placed on tax payers.

**SEN. LEWIS** commented he thought the bill was dealing with transmission authority, but it sounds like the other bill is to make it illegal, and he wanted to know why the Committee doesn't just vote no on the transmission authority bill. **CHAIRMAN TOOLE** informed him that the whole issue is usually specific to a given project. He stated the reason for this bill is the discussion that took place on evolving the transmission authority on proposals for public investment in the private projects.

**SEN. PERRY** asked about the constitutionality of the bill because the legislature cannot designate in-state preference one way or the other. **CHAIRMAN TOOLE** informed him that the difference with this bill is the predicated public investment on the seat of a public benefit. He said the problem with a full tax credit there is no tie to public benefit is that it would be a tax credit regardless of public interest.

**Closing by Sponsor:**

**CHAIRMAN TOOLE** closed. He informed the Committee that this bill serves as a reminder of the concerns about the expenditure of government mining, and inefficiencies. He said this bill is about the public assuming the risk, the public will either have equity interest in the transmissions, or receive the benefit of the generation process.

**EXECUTIVE ACTION ON SB 428**

*{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 20}*

**Motion/Vote:** **SEN. LEWIS** moved that SB 428 DO PASS. Motion carried 9-2 by voice vote with **SEN. CURTISS** and **SEN. MCGEE** voting no.

**EXECUTIVE ACTION ON SB 364**

*{Tape: 1; Side: A; Approx. Time Counter: 20 - 25}*

**Motion:** **SEN. LIND** moved SB 364 DO PASS.

**Motion:** **SEN. LIND** moved that AMENDMENT SB036403.acb BE ADOPTED.

**Discussion:** **SEN. LIND** informed the Committee the amendment is language suggested by the cooperatives.

EXHIBIT(ens39a01)

*{Tape: 1; Side: B}*

Vote: Motion carried unanimously by voice vote.

*{Tape: 1; Side: B; Approx. Time Counter: 9 - 12}*

Motion: SEN. LIND moved that AMENDMENT SB036401.ate BE ADOPTED.

EXHIBIT(ens39a02)

Discussion: Casey Barrs, LSD, distributed and explained the amendment. The members were unclear what the amendment did and someone asked if someone from the audience could clarify it. SEN. MCGEE objected to CHAIRMAN TOOLE asking the Committee if it is okay to have someone address the amendment. The Committee recessed while CHAIRMAN TOOLE talked to Mr. Petesch, Code Commissioner, who informed him that it is the call of the chair to bring someone before the Committee to answer questions when executive action is taking place.

Vote: Motion carried 6-5 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting no.

Motion: SEN. LIND moved that AMENDMENT SB036402.acb be segregated and moved amendments 1,2,3,4,7,8,and 9 BE ADOPTED.

EXHIBIT(ens39a03)

Vote: Motion carried unanimously by voice vote.

Motion: SEN. LIND moved that amendments 5 and 6 of SB036402.acb BE ADOPTED.

Discussion: SEN. ESSMANN wanted to know why amendment 6 was changed from a whole number to a tenth of a number. Mr. Barrs replied he didn't know.

Motion: SEN. ESSMANN moved that amendment 6 be segregated from amendment 5, and the motion is to vote on amendment 5.

*{Tape: 2; Side: A}*

Vote: Motion carried unanimously by voice vote.

**Motion/Vote:** SEN. LIND moved that SB 364 DO PASS AS AMENDED. Motion failed 5-6 by roll call vote with SEN. CROMLEY, SEN. HARRINGTON, SEN. LIND, SEN. TOOLE, and SEN. WILLIAMS voting aye.

**Motion/Vote:** SEN. ROUSH moved that SB 364 BE TABLED AND THE VOTE REVERSED. Motion carried 6-5 by roll call vote with SEN. TOOLE, SEN. WILLIAMS, SEN. CROMLEY SEN. HARRINGTON, AND SEN. LIND voting no

**EXECUTIVE ACTION ON SB 415**

*{Tape: 2; Side: A; Approx. Time Counter: 2 - 25}*

**Motion/Vote:** SEN. MCGEE moved that SB 415 BE TABLED. Motion failed 5-6 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting aye.

**Motion:** SEN. LIND moved that SB 415 DO PASS.

**Motion:** SEN. LIND moved that AMENDMENT SB041501.ate BE ADOPTED.

**EXHIBIT** (ens39a04)

**Discussion:** Casey Barrs, LSD, distributed and explained amendment SB041501.ate. He said this amendment does three things: 1) Section 1 pushes back the dates in reaching the renewable graduated standard that is described in this act; 2) Section 5 is housekeeping by encouraging employment in Montana; and 3) Section 6 establishes the cost of caps.

**Vote:** Motion carried 10-1 by voice vote with SEN. MCGEE voting no.

**Motion:** SEN. LEWIS moved that AMENDMENT SB041502.ate BE ADOPTED.

**EXHIBIT** (ens39a05)

**Discussion:** SEN. LEWIS explained the amendment. SEN. LIND asked him to give a specific example. SEN. LEWIS said that utilities that are not funded by USB charges, this bill will provide credit toward their 15 percent conservation investment. SEN. LEWIS gave an example; if an investment made by the utility in the form of making their generation facility more efficient or their transmission facility more efficient, they can document what energy they saved at their own expense. Under this bill, the utility has to provide evidence that they have purchased the 15 percent of renewables. The purchase is subject to review by the

PSC. **CHAIRMAN TOOLE** stated he opposes the amendment. He said that NW has approximately 100 avg mgw of conservation in their plan. He stated, this is mixing apples and oranges, and we should be promoting conservation. The effect of this process should be no new renewable investment over this time period.

**Vote:** Motion failed 5-6 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting aye.

**Motion:** SEN. ESSMANN moved that AMENDMENT SB041502.acb BE ADOPTED.

**EXHIBIT**(ens39a06)

**Discussion:** SEN. ESSMANN explained the amendment. He said, if the elements of a mandate that is required, could have a impact that will increase the cost of energy supplies to the suppliers of utilities. He said this amendment works in two ways: 1) It will save the retail customers from a increase in their utility rates; and 2) It will put the utility back into a better bargaining position. If the renewable suppliers try to take advantage of the mandate, it will increase the utility rate. This amendment is a savings clause for the customers in Montana.

**Vote:** Motion failed 5-6 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting aye.

**Motion:** SEN. ESSMANN moved that AMENDMENT SB041503.ate BE ADOPTED.

**EXHIBIT**(ens39a07)

**Discussion:** Mr. Barrs informed the Committee the amendment just arrived, and has not been edited.

*{Tape: 2; Side: B}*

SEN. ESSMANN explained the amendment stating it gives the PSC authority to intervene when a cost hike has taken place through a utility that isn't in the customer's best interest.

**Vote:** Motion carried 6-5 by roll call vote with CHAIRMAN TOOLE, SEN. WILLIAMS, SEN. CROMLEY, SEN. HARRINGTON, and SEN. LIND voting no.

**Motion:** SEN. PERRY moved that AMENDMENT SB041503.acb BE ADOPTED.

**EXHIBIT**(ens39a08)

**Discussion:** Mr. Barrs explained the amendment. It pertains to the definition of community renewable energy projects.

**SEN. PERRY** said with the meter running backwards, he feels that five mgw is too large, and the customer would be the one losing.

**Motion:** SEN. LEWIS moved that AMENDMENT SB041504.ACB BE ADOPTED.

**EXHIBIT**(ens39a09)

**Discussion:** CHAIRMAN TOOLE informed the Committee the amendment sets the rate in place so the payers don't have to pay for the interconnect fee.

**Vote:** Motion failed 5-6 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, AND SEN. PERRY voting aye.

**Motion/Vote:** SEN. LEWIS moved that AMENDMENT SB041505.acb BE ADOPTED. Motion failed 5-6 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting aye.

**EXHIBIT**(ens39a10)

**Motion:** SEN. LEWIS moved that AMENDMENT SB041507.acb BE ADOPTED.

**EXHIBIT**(ens39a11)

**Discussion:** SEN. LEWIS informed the Committee if the federal wind energy credit expires, then this amendment is void.

**Vote:** Motion carried 6-5 by roll call vote with CHAIRMAN TOOLE, SEN. WILLIAMS, SEN. CROMLEY, SEN. HARRINGTON, and SEN. LIND voting no.

**Motion/Vote:** SEN. CROMLEY moved that SB 415 DO PASS AS AMENDED. Motion carried 9-2 by roll call vote with SEN. CURTISS and SEN. MCGEE voting no.

#### **EXECUTIVE ACTION ON SB 34**

*{Tape: 3; Side: A; Approx. Time Counter: 7 - 16}*

**Motion:** SEN. ROUSH moved that SB 34 DO PASS.

**Discussion:** SEN. ROUSH informed the Committee said there is another bill in the Senate he was trying to keep alive, because a bill similar to this one was killed in the House Appropriation



Committee that would subsidize low-income assistance with \$10 million. SB 34, if passed, will replace SB 371, and keep the program alive. **CHAIRMAN TOOLE** asked **SEN. ROUSH**, if this bill passes out of Committee, if he was going to oppose SB 371. **SEN. ROUSH** replied, yes.

**SEN. LIND** said if he understands this amendment, and previous testimony that was heard, that no facility in the state is providing less than 25 percent, and extends the sunset date.

**SEN. HARRINGTON** informed the Committee that he feels that SB 371 will do more than SB 34. SB 371 is more beneficial to facilities and low-income people. He said this bill will increase 18 cents a month for the rate payer.

**CHAIRMAN TOOLE** asked **Doug Hardy** to comment. **Mr. Hardy** said the increase to NWs obligation from 17 percent to 25 percent, and will increase the co-ops more. The percentage will change from 17 percent to 25 percent.

**CHAIRMAN TOOLE** and the Committee discussed the House Appropriations bill that killed \$2.1 million supplement for LIEAP for 2005. The \$10 million is placed on the back of the rate payers.

**SEN. ROUSH** suggested a conceptual amendment on page 1, Section 1, line 5, strike "40" and insert "25" before percent.

**Motion/Vote:** **SEN. ROUSH** moved that **CONCEPTUAL AMENDMENT BE ADOPTED**. Motion carried 6-5 by roll call vote with **SEN. CROMLEY**, **SEN. HARRINGTON**, **SEN. LIND**, **SEN. TOOLE**, and **SEN. WILLIAMS** voting no.

**Motion/Vote:** **SEN. ROUSH** moved that **SB 34 DO PASS AS AMENDED**. Motion carried 7-4 by roll call vote with **SEN. CROMLEY**, **SEN. HARRINGTON**, **SEN. LIND**, and **SEN. WILLIAMS** voting no.

#### EXECUTIVE ACTION ON SB 371

*{Tape: 3; Side: B}*

**Motion:** **SEN. TOOLE** moved to **RECONSIDER PREVIOUS MOTION TO TAKE OFF THE TABLE** on SB 371. Motion carried 6-5 by roll call vote with **SEN. CURTISS**, **SEN. ESSMANN**, **SEN. LEWIS**, **SEN. MCGEE**, and **SEN. PERRY** voting no.

**EXHIBIT** (ens39a12)

**Motion:** SEN. ROUSH moved that AMENDMENT SB037102.acb BE ADOPTED.

SEN. MCGEE, SEN. CURTISS, SEN. PERRY, and SEN. CROMLEY left proxies with the Committee Secretary.

**Discussion:** CHAIRMAN TOOLE informed the Committee this is the Universal Systems Benefit program that has been in effect for a long time. He said this bill proposes to fulfill the needs by keeping the funding at 2.4 percent, but it changes the time and amount that the 2.4 percent is calculated on.

SEN. ESSMANN said he is opposing this bill. He talked about the subcommittee that he served on, and the amendments that were added to the bill. He said it sets up a new program, and they reached too far. He said the amendments did too much to the bill.

SEN. HARRINGTON asked CHAIRMAN TOOLE to reconsider his actions on the bill. He said there are too many changes in the bill. He informed the members that when he was in the legislature in 1997, he was one who voted for de-regulation, and has been paying for it dearly. He has seen what it has done to senior citizens, and other programs in the communities.

VICE CHAIR WILLIAMS thanked SEN. ESSMANN AND SEN. LIND for all the time they spent on this bill on a Saturday afternoon. She said despite what SEN. ESSMANN feels, she is going to vote to get this bill off the table and get it out to the Senate floor. She said for the reasons that SEN. HARRINGTON stated, the Committee should vote to get it off of the table. She said if changes need to be made, it can be done on the floor.

*{Tape: 3; Side: B; Approx. Time Counter: 5 - 7}*

**Motion/Vote:** SEN. TOOLE moved that SB 371 DO PASS. Motion carried 6-5 by roll call vote with SEN. CURTISS, SEN. ESSMANN, SEN. LEWIS, SEN. MCGEE, and SEN. PERRY voting no. SEN. MCGEE, SEN. CURTISS, SEN. PERRY, and SEN. CROMLEY voted no by proxy.

#### EXECUTIVE ACTION ON SB 307

*{Tape: 3; Side: B; Approx. Time Counter: 7 - 8}*

**Motion/Vote:** SEN. TOOLE moved that SB 307 BE TABLED. Motion carried unanimously by voice vote. SEN. MCGEE, SEN. CURTISS, SEN. PERRY, and SEN. CROMLEY voted by proxy.

**EXECUTIVE ACTION ON SB 372**

*{Tape: 3; Side: B; Approx. Time Counter: 8 - 9}*

**Motion/Vote:** SEN. TOOLE moved that SB 372 BE TABLED. Motion carried unanimously by voice vote. SEN. MCGEE, SEN. CURTISS, SEN. PERRY, and SEN. CROMLEY voted by proxy.

**Other Information:**

**Mike Costanti, National Renewable Energy Laboratory (NREL), Bozeman,** gave booklet to Committee Secretary. See report dated September 2004, NREL/SR-500-36414.

**EXHIBIT**(ens39a13)

**ADJOURNMENT**

**Adjournment: 5:45 P.M.**

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SEN. KEN TOOLE, Chairman

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CLAUDIA JOHNSON, Secretary

KT/cj

Additional Exhibits:

**EXHIBIT ([ens39aad0.PDF](#))**